

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**EDWARD WILLIAM SPEIGHTS, III**

**APPELLANT**

**VERSUS**

**CASE NO. 2016-CA-01691**

**KIMBERLY DANIELS SPEIGHTS**

**APPELLEE**

**ON APPEAL FROM  
THE CHANCERY COURT OF JEFFERSON DAVIS COUNTY, MISSISSIPPI**

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**BRIEF OF APPELLANT**

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**ATTORNEY FOR APPELLANT:**

Renee McBride Porter  
Mississippi State Bar No. 8388  
Porter Law Firm, P.A.  
915 Main Street  
Post Office Box 982  
Columbia, Mississippi 39429  
Telephone: (601) 731-1886  
Facsimile: (601) 731-1887  
E-mail: renee@porterlf.com  
wepiercejr@porterlf.com

**ORAL ARGUMENT REQUESTED**

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**REQUEST FOR ORAL ARGUMENT**

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The Appellant, Edward William Speights, III, hereby respectfully requests that the Honorable Court hear oral argument in support of his appeal. Pursuant to M.R.A.P. 34(a), “... oral argument will be allowed unless the court, or the panel to which the case is assigned, unanimously agrees that: (1) the appeal is frivolous; or (2) the dispositive issue or set of issues has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and Record and the decisional process would not be significantly aided by oral argument.” The Appellant submits that no exceptional circumstances in this case make oral argument impractical or inadvisable. Rather, there are important and complex issues for the Honorable Court to consider that require thorough and careful examination.

This appeal addresses issues in which a trial court granted a fault divorce without ground proven, permitted the Appellant’s parents to act as his *de facto* attorneys, divided the parties’ marital estate without having proper information before the Chancery Court pursuant to *Uniform Chancery Court Rule* 8.05, without proper determination of marital and non-marital property pursuant to *Hemsley*, and finally without any consideration of the *Ferguson* factors as mandated by the Honorable Court. The Appellant respectfully

requests the opportunity to be heard on such issues. The appeal concerns application of law to the facts. Oral discussion of the facts and the applicable precedent would benefit the Honorable Court. The Appellant therefore requests that the maximum time allowed under the Rules be afforded for his presentation.

**/s/ Renee McBride Porter**

Renee McBride Porter  
Mississippi State Bar No. 8388  
Porter Law Firm, P.A.  
915 Main Street  
Post Office Box 982  
Columbia, Mississippi 39429  
Telephone: (601) 731-1886  
Facsimile: (601) 731-1887  
E-mail: rporter@porterlf.com  
wepiercejr@porterlf.com  
Counsel for the Appellant

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible conflicts, disqualifications, or recusal:

- |                                                                                                                                                                              |                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| 1. Edward William Speights, III                                                                                                                                              | Appellant                 |
| 2. Kimberly Daniels Speights                                                                                                                                                 | Appellee                  |
| 3. Renee McBride Porter<br>Porter Law Firm, P.A.<br>P.O. Box 982<br>915 Main Street<br>Columbia, Mississippi 39429<br>Email: rporter@porterlf.com<br>wepiercejr@porterlf.com | Attorney for<br>Appellant |
| 4. Honorable S. Christopher Farris<br>6645 Highway 98 West<br>Suite 3<br>Hattiesburg, Mississippi 39402-7509<br>Email: rusnapper@aol.com                                     | Attorney for<br>Appellee  |
| 5. Honorable Gerald M. Martin<br>Post Office Box 325<br>Raleigh, Mississippi 39153                                                                                           | Trial Court Judge         |

**RESPECTFULLY SUBMITTED**, this the 11<sup>th</sup> day of August A.D. 2017.

**/s/ Renee McBride Porter**  
Renee McBride Porter  
Attorney of Record for the Appellant

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**VERSUS**

**CASE NO. 2016-CA-01691**

**KIMBERLY DANIELS SPEIGHTS**

**APPELLEE**

**STATEMENT OF ASSIGNMENT**

This case is an appeal from a Chancery Court's Judgment of Divorce, and should be assigned to the Court of Appeals of the State of Mississippi.

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

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**APPELLANT**

**VERSUS**

**CASE NO. 2016-CA-01691**

**KIMBERLY DANIELS SPEIGHTS**

**APPELLEE**

**STATEMENT OF THE ISSUES**

- 1.** Did the Chancery Court commit error in failing to make any findings of fact and conclusions of law in granting the Appellee (hereinafter referred to as Kimberly), a divorce from the Appellant (hereinafter referred to as Trey) on the statutory ground of habitual drunkenness as set forth in Miss. Code §93-5-1(5)?
- 2.** Did the Chancery Court commit error in permitting Trey's parents to act as Trey's *de facto* attorneys in the division of marital assets?
- 3.** Did the Chancery Court commit error in failing to order the parties to submit a financial disclosure pursuant to U.C.C.R. 8.05, thereby failing to separate marital assets from non-marital assets, and making it impossible for the Court to make an equitable distribution of marital assets?
- 4.** Did the Chancery Court by failing to make a distinction between marital and non-marital property pursuant to *Hemsley*, and failing to evaluate the division of marital assets by the following guidelines set forth by this Court, i.e. the *Ferguson* factors, and to support its decisions with findings of facts and conclusions of law, thus committing error in distributing the marital assets of the parties and resulting distribution of assets was inequitable?



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**APPELLEE**

**STATEMENT OF CASE**

**1.** Trey (Appellant) and Kimberly (Appellee) were married October 23, 2004 and separated sometime in December 2015. Subsequently, on January 11, 2016, Kimberly filed a Complaint for Divorce against Trey on the ground of “habitual cruel and inhuman treatment, excessive use of Schedule I drugs; habitual drunkenness [sic] or in the alternative Irreconcilable Differences.” [ER 3:6-7]. Kimberly further alleged, *inter alia*, that the parties had accumulated real property and personalty during the course of their marriage, and that Trey had liquidated some of the marital assets. Kimberly requested that the Court would order Trey to pay half of the sales proceeds to her. [*id.* p. 7].

**2.** Pursuant to the said *Complaint for Divorce*, on January 11, 2016, *Summons* pursuant to M.R.C.P 4 and M.R.C.P. 81 were issued for service of process upon Trey, both of were served on Trey January 21, 2016. [ER 4-5]. The matter was subsequently continued to March 2, 2016 [ER 6]. Trey filed his *Answer to Complaint for Divorce and Affirmative Defenses* [ER 7] on February 19, 2016 in which he generally denied that Kimberly had any grounds for Divorce and asserted certain defenses in which he alleged that Kimberly was before the Court with unclean hands, *inter alia*. Kimberly propounded discovery April 18, 2016 [ER 8].

3. On June 28, 2016, another *Summons* pursuant to M.R.C.P. 81 was issued for service of process [ER 9], upon Trey which was served July 7, 2016 [ER 12], summoning Trey to appear for a hearing to be held August 8, 2016 at the Covington County Chancery Courthouse in Collins, Mississippi. Subsequently, on July 11, 2016, Trey's attorney moved the court for leave to withdraw from the matter as Trey's attorney [ER 10], and notice his *Motion to Allow Counsel to Withdraw* to be heard July 18, 2016 [ER 11]. An *Order Allowing Withdrawal as Counsel* was entered July 18, 2016, granting leave to Trey's attorney to withdraw [ER 12].

4. The August 8, 2016 hearing hereinabove referenced was subsequently continued and reset for trial September 21, 2016, with the *Order of Continuing the Case and Resetting for Trial* served upon Trey September 11, 2016 [ER 14-15].

5. Notwithstanding the hereinabove referenced *Order of Continuing the Case and Resetting for Trial* served upon Trey September 11, 2016 and setting the trial of this matter for September 21, 2017 [ER 14-15], according to the *Judgment of Divorce* [ER 16] and page 1 of the Transcripts [ER 20] regarding this matter, this matter was tried by the Court on August 21, 2016 (a Sunday), in the absence of Trey, with the Court entering a *Judgment of Divorce* [ER 16] and a *Qualified Domestic Relations Order to the Simplified Employee Pension of Speights Roofing, LLC FBO Edward W. Speights, III* [ER 17]. Pursuant to the said *Judgment of Divorce*, the Court, based on the testimony of Kimberly and Trey's parents, granted a divorce to Kimberly on the statutory ground of habitual drunkenness pursuant to Miss. Code § 93-5-1(5). [ER 16:35 ¶V]. Further, the Court found that the division of property as stipulated in the said *Judgment of Divorce* was a fair and

equitable division. [*id.*, ¶VI] In addressing division of personalty, the said *Judgment of Divorce* provided that “. . . This distribution is based off of the lists presented to the Court as Exhibit 1 and 2 signed by Mrs. Speights and Mr. Speights [*sic*] parents. Attached hereto as Exhibit 1 and Exhibit 2.” [ER 16:36-37]. **Both Exhibits 1 and 2 are absent from the Record.**

6. Subsequent to Trey’s present counsel entering this matter, Trey moved the Court for an enlargement of time in which to appeal [R. 48-55]. The Court extended the time during which Trey could appeal his case until November 23, 2016 [ER. 18]. Aggrieved by the Court’s *Judgment of Divorce*, Trey noticed all necessary persons and Kimberly of his appeal November 23, 2016 [ER 19].

7. For all reasons herein set forth, the *Judgment of Divorce* [ER 16] entered October 4, 2016 and the *Qualified Domestic Relations Order to the Simplified Employee Pension of Speights Roofing, LLC FBO Edward W. Speights, III* [ER 17] therefrom issuing should be vacated and this matter remanded to the Chancery Court, and the Appellee should be taxed with all legal costs associated herewith including reasonable fees of counsel.

### **SUMMARY OF THE ARGUMENT**

The Appellant, Edward William Speights, III (hereinafter referred to as Trey), contends that the lower court erred on the following grounds:

1. The Chancery Court committed reversible error in granting Kimberly a divorce from Trey solely on the ground of habitual drunkenness pursuant to Miss Code Ann. §93-5-1(5) as the said Court failed to apply the correct legal standard as to the burden of proof to arrive at its decision. Trey will show in his argument that the burden of proof

was not met in granting Kimberly a divorce from the Trey on the statutory ground of habitual drunkenness as set forth in Miss Code Ann. §93-5-1(5). Although the Record shows that Trey had indeed suffered from a problem with alcohol, the Record shows no proof to support that the alcohol abuse continued at the time of the trial. In fact, testimony shows that Trey was no longer using alcohol at the time of the trial. Therefore, Trey argues that the *Judgment of Divorce* should be vacated.

**2.** Furthermore, the Record shows that the Chancery Court permitted Trey's parents to act as Trey's *de facto* attorneys in the division of marital assets during Trey's absence from the trial. Although Exhibits 1 and 2 are absent from the Record, the Chancery Court in the *Judgment of Divorce* explicitly states that the said Exhibits were lists upon which the Chancery Court depended to reach a division of personalty, and that these lists were signed by Trey's parents. Trey submits to the Honorable Court that his parents were and are without any authority to act as his attorneys, and that it was wholly improper for the Chancery Court to allow the same. The action is manifestly wrong, and is reversible error. The *Judgment of Divorce* should therefore be vacated and this matter remanded to the Chancery Court.

**3.** Neither parties submitted a financial disclosure pursuant to U.C.C.R. 8.05. Trey contends it is impossible to separate marital assets from non-marital assets without a full disclosure of assets from both parties as mandated by U.C.C.R. 8.05. Furthermore, an equitable division of marital property is impossible without a disclosure of the same by means of the U.C.C.R. 8.05. Trey argues that that the property division provided by the said *Judgment of Divorce* is therefore based upon hearsay, and is sufficient ground to

warrant a vacating of the Judgment of Divorce.

4. An evaluation of the *Ferguson* factors is completely absent from the Record. Trey contends that due to lack of the application of the *Ferguson* factors, the property division stipulated in the said *Judgment of Divorce* is without a legal basis. Trey will show that the Chancery Court's failure to make certain findings on the Record regarding the *Ferguson* factors is manifest error, and that the *Judgment of Divorce* should thus be vacated.

### **ARGUMENT**

#### **I. It was manifest error for the Chancery Court to grant Kimberly a divorce from Trey on the statutory ground of habitual drunkenness as set forth in Miss Code Ann. §93-5-1(5).**

Miss. Code §93-5-1(5) provides that “Divorces from the bonds of matrimony may be decreed to the injured party for any one or more of the following twelve (12) causes . . . Fifth. Habitual drunkenness. . .” [*id.*] From the commencement of this cause of action, Kimberly alleged three (3) fault based grounds for divorce, i.e. habitual cruel and inhuman treatment, “excessive use of Schedule I drugs,” and habitual drunkenness [*ER* 3:6-7]. With Trey being absent, and after hearing testimony from Kimberly and Trey's father and mother, the Court hastily granted Kimberly a divorce of the ground of habitual drunkenness, with the Chancellor issuing only a brief statement to support his granting the divorce to Kimberly [*ER* 22:50].

Trey contends that the Chancery Court's decision was made without a full evaluation of the factors set by this Honorable Court that are necessary to prove the ground of habitual drunkenness. This Court has set forth three factors, all of which must

be proven, in order to prove the ground of habitual drunkenness: frequent abuse of alcohol, that the alcohol abuse negatively affected the marriage, and that the alcohol abuse continued at the time of the trial.

**A court may grant a divorce on the ground of habitual drunkenness if the plaintiff proves that: (1) the defendant frequently abused alcohol; (2) the alcohol abuse negatively affected the marriage; and (3) the alcohol abuse continued at the time of the trial. See *Sproles v. Sproles*, 782 So.2d 742, 747-48 (¶ 20) (Miss.2001); Deborah H. Bell, *Bell on Mississippi Family Law* § 4.02[6] (2005) [*Turner v. Turner*, 73 So.3d 576, 583 (¶ 30) (Miss.Ct.App. 2011)].**

Furthermore, these factors should have been proven even though Trey was not present at the trial.

**A party seeking a divorce must prove the alleged ground, even in the absence of a defense by the other spouse. [*Lindsey v. Lindsey*, 818 So.2d 1191, 1194 (¶ 13) (Miss.2002)].**

Although Kimberly made allegations of Trey's problems with alcohol, when questioned by her own counsel regarding Trey's continuing use of alcohol, she could only relate a purported event that occurred two (2) months prior to the September 21, 2016 trial. [*ER* 22:7-48]. Trey's parents, no doubt intimidated by the proceedings as they appeared without counsel due to their unconditional love for their son, both expressed hope that Trey was agreeable to treatment. [*id.* pp. 49-50]. Trey contends that the Record shows no evidence that he continued to abuse alcohol up to the time of the trial, and that the Chancery Court erred in granting Kimberly a Judgment of Divorce on the fault ground of habitual drunkenness without a clear and convincing showing of proof necessary to support **all** elements of the alleged ground.

## **II. It was manifest error for the Chancery Court to permit Trey's parents to act as Trey's *de facto* attorneys in the division of marital assets.**

Trey contends that the Record and Transcripts of the trial of this matter demonstrate that the Chancery Court permitted his parents to act beyond their scope as concerned parents during the trial of this matter. Beyond hearing Trey's parents' testimony, the Chancery Court further permitted Trey's parents some manner of representative legal authority by permitting them to negotiate a distribution of property. This premise is clearly evidenced *prima facie* in the said *Judgment of Divorce*: "... This distribution is based off of the lists presented to the Court as Exhibit 1 and 2 signed by Mrs. Speights and Mr. Speights [*sic*] parents. Attached hereto as Exhibit 1 and Exhibit 2." [ER 16:36-37]. Although both Exhibits 1 and 2 are absent from the Record, the reference to these Exhibits contained in the *Judgment of Divorce* demonstrates the extent to which the Chancery Court permitted Trey's parents to exercise authority in distributing the parties' property.

The trial transcripts further demonstrate that the Chancery Court erroneously depended upon Trey's parents as *de facto* attorneys for Trey. Immediately subsequent to granting Kimberly a divorce on the ground of habitual drunkenness, the Chancery Court questioned Kimberly's counsel as follows:

**The Court:** And it's my understanding you have discussed with Mr. and Mrs. Speights a division of the marital estate?

**Mr. Farris:** Yes, sir, I'll proceed with that at this point.  
[ER 22:50-51].

Trey contends that the Chancery Court's actions in permitting his parents to exercise such authority over the division of the marital estate was wholly improper and is manifestly wrong. Qualifications are set forth by statute pursuant to Miss. Code § 73-3-

2(2) for individuals to practice law in the State of Mississippi. Trey has personal knowledge that neither of his parents meet these qualifications. Trey further has personal knowledge and submits that neither of his parents are qualified to practice law in the State of Mississippi pursuant to Miss. Code § 73-3-31. Furthermore, Trey has not executed a power of attorney authorizing his parents to act as attorneys in fact on his behalf in any capacity. Due to the Chancery Court permitting his parents to act as his *de facto* attorneys, Trey submits unto the Honorable Court that the matter *sub judice* should be reversed and remanded.

**III. It was manifest error for Chancery Court to attempt to equitably divide the marital estate without both parties filing financial disclosures pursuant to U.C.C.R. 8.05, thereby making it impossible to separate marital assets from non-marital assets, and making it impossible to make an equitable distribution of marital assets.**

Trey contends that the Record is completely void of any mention of a financial disclosure from either party pursuant to *Uniform Chancery Court Rule* 8.05. The Honorable Court has consistently found unless excused for good cause shown, that compliance with the said Rule is mandatory:

**Uniform Chancery Court Rule 8.05 requires each party in a domestic-relations case involving economic issues and/or property division to file a financial statement with the court.** [*Bell v. Stevenson*, 158 So.3d 1229, 1237 (¶22) (Miss. Ct. App. 2015)].

The said Rule is as follows:

**Unless excused by Order of the Court for good cause shown, each party in every domestic case involving economic issues and/or property division shall provide the opposite party or counsel, if known, the following disclosures:**

**(a) A detailed written statement of actual income and expenses and assets and liabilities, such statement to be on the forms attached hereto as Exhibit “A”, copies of the preceding year’s Federal and State Income Tax returns, in full form as filed, or copies of W-2s if the return has not**



yet been filed; and, a general statement of the providing party describing employment history and earnings from the inception of the marriage or from the date of divorce, whichever is applicable; or,

(b) By agreement of the parties, or on motion and by order of the Court, or on the Court's own motion, a more detailed statement on the form attached hereto as Exhibit "B".

The party providing the required written statement shall immediately file a Certificate of Compliance with the Chancery Clerk for filing in the court file.

A party filing a document containing personal identifiers and/or sensitive information and data may (1) file an unredacted document under seal; this document shall be retained by the court as part of the record; or, (2) file a reference list under seal. The reference list shall contain the complete personal data identifiers and/or the complete sensitive information and data required by this Rule.

The disclosures shall be made by the plaintiff not later than the time that the defendant's Answer is due, and by the defendant at the time that the defendant's Answer is due, but not later than 45 days from the date of the filing of the commencing pleading. The Court may extend or shorten the required time for disclosure upon written motion of one of the parties and upon good cause shown.

The disclosures shall include any and all assets and liabilities, whether marital or non-marital. A party is under a duty to supplement prior disclosures if that party knows that the disclosure, though correct when made, no longer accurately reflects any and all actual income and expenses and assets and liabilities, as required by this Rule.

When offered in a trial or a conference, the party offering the disclosure statement shall provide a copy of the disclosure statement to the Court, the witness and opposing counsel.

This rule shall not preclude any litigant from exercising the right of discovery, but duplicate effort shall be avoided.

The failure to observe this rule, without just cause, shall constitute contempt of Court for which the Court shall impose appropriate sanctions and penalties.

[Amended effective July 1, 1996; amended effective January 8, 2009, to provide procedures for filing documents containing sensitive personal information; amended effective July 1, 2011 to incorporate an optional long form financial statement; amended effective July 1, 2012 to provide a duty to supplement disclosures.]

Trey contends that the purpose of compliance with U.C.C.R 8.05 is to provide necessary information unto the court upon which the court can effectuate a determination of marital and non-marital assets as required by *Hemsley*, and a subsequent equitable division of marital assets, *inter alia*. The Honorable Court has previously addressed the purpose of compliance with U.C.C.R 8.05 as follows:

**A Rule 8.05 statement is a mandatory filing with the chancery court that provides that court with accurate financial information to assist in its equitable distribution of the divorcing parties' assets. Miss. Unif. Ch. R. 8.05. In many divorce cases, a chancellor undertaking equitable distribution has the power to control virtually every asset the parties possess. It is vital to the effective administration of justice in the domestic relations arena that chancellors undertake this task while in possession of accurate financial information. To that effect, our rules provide that the failure to submit a Rule 8.05 statement without just cause constitutes contempt of court. Miss. Unif. Ch. R. 8.05. [*Trim v. Trim*, 33 So.3d 471, 477-478 (¶16) (Miss.2010)].**

In *Kalman v. Kalman*, 905 So.2d 760 (Miss.App. 2004), both parties, one of which was *pro se*, failed to file a financial disclosure pursuant to U.C.C.R. 8.05. In its reversal and remand of the case, the Honorable Court opined:

**Uniform Chancery Court Rule 8.05 requires a detailed and truthful disclosure of both parties' finances. Under the plain language of this rule, the 8.05 disclosure is mandatory unless 'excused by Order of the Court for good cause.' The rule dictates that 'each party in every domestic case involving economic issues and/or property division shall provide the opposite party or counsel, if known [enumerated financial disclosures.]' This rule provides that '[t]he failure to observe this rule, without just cause, shall constitute contempt of Court for which the Court shall impose appropriate sanctions and penalties. [id., 764 (¶11)].**

Trey does not suggest that the failure to comply with U.C.C.R. 8.05 in the matter *sub judice* demonstrates a fraudulent effort from either party. However, Trey strongly contends that without properly executed financial disclosures from both parties, the Chancery Court could not distinguish between marital and non-marital property, and

certainly could not effectuate an equitable division of the same. Trey further contends that in lieu of financial disclosures pursuant to U.C.C.R. 8.05, that the Record indicates that property assessments were effectuate between Kimberly, Kimberly's attorney, and Trey's parents, and these assessments (lists) were to be included as Exhibits 1 and 2 to the *Judgment of Divorce*, notwithstanding, these Exhibits' absence from the Record.

Nonetheless, Trey contends that such actions permitted by the Chancery Court were improper, and are grounds for the Honorable Court to vacate the Chancery Court's purported equitable division of marital property on the basis that without properly executed and filed financial disclosures from both parties pursuant to U.C.C.R. 8.05, the Chancery Court failed to properly ascertain marital and non-marital property, and based its division of the marital estate on essentially hearsay from Trey's parents. The purported property division appertaining to the *Judgment of Divorce* should therefore be reversed and remanded to the Chancery Court for proper evaluation of the parties' assets, with both parties' executing and filing a financial disclosure as required by U.C.C.R. 8.05.

**IV. The Chancery Court's property division was manifest error inasmuch as the Chancery Court failed to make a legitimate distinction between marital and non-marital property pursuant to *Hemsley*, failed to evaluate the division of marital assets by the following guidelines set forth by this Court, i.e. the *Ferguson* factors, and failed to support its decisions with and on the Record findings of facts and conclusions of law, thus committing error in distributing the marital assets of the parties and resulting distribution of assets was inequitable.**

*Ferguson v. Ferguson*, 639 So. 2d 921 (Miss.1994) established equitable distribution of marital property in the State of Mississippi. The *Ferguson* Court set forth four (4) steps to equitable distribution of property, four of which are included by Deborah Bell in *Bell on Mississippi Family Law* p. 154:

1. Classify assets as marital or separate.
2. Value assets, using expert testimony if necessary.
3. Divide marital property equitably, based on factors set out in the decision.
4. Award alimony if needed after the division of assets.

Trey contends that a proper evaluation of certain factors set forth by the Honorable Court in *Ferguson* is necessary to achieve an equitable division of marital property. A judgment of divorce without an on the record evaluation of the *Ferguson* factors is manifestly wrong, and should be remanded by this Court. Such an on the record finding of facts has not been provided to the chancery courts as an option, but has been mandated as a matter of law. When dividing marital assets, chancellors are obligated to make an on the record finding of facts and conclusions pursuant to *Ferguson*.

**When ruling on the distribution of marital assets, the chancellor must make certain findings regarding the application of the factors set out in *Ferguson v. Ferguson*, 639 So.2d 921, 928 (Miss.1994). [Rodriguez v. Rodriguez, 2 So.3d 725, (¶ 9) (Miss. 2009)].**

**To equitably divide property, the chancellor must: (1) classify the parties' assets as marital or separate, (2) value those assets, and (3) equitably divide the marital assets [based upon the *Ferguson* <sup>[2]</sup> factors]."** *Anderson v. Anderson*, 174 So.3d 925, 929 (¶ 8) (Miss.Ct.App. 2015) (citations omitted). [Mosher v. Mosher, 192 So.3d 1122, ¶11 (Miss. 2016)].

**Factor tests, such as provided in *Ferguson* for property division and *Armstrong* for alimony, must be considered on the record in every case.** [Lowry v. Lowry 25 So.3d 274, 280 (¶ 7) (Miss.2009)].

**The failure to consider all applicable *Ferguson* factors is error and mandates reversal.** [id., 280 (¶ 7) (Miss.2009)].

**We once again remind chancellors of the importance of making on-the-record findings for factor tests such as *Ferguson*. The policy for this rule is clearly set out in *Lowrey*.** [*Heimert v. Heimert*, 101 So.3d 187 (2012)].

In *Ferguson*, this Court further found as follows:

**Given the development of domestic relations law, this Court recognizes the need for guidelines to aid chancellors in their adjudication of marital property division. Therefore, this Court directs the chancery**

**courts to evaluate the division of marital assets by the following guidelines and to support their decisions with findings of facts and conclusions of law for purposes of appellate review. [*Ferguson v. Ferguson*, 639 So. 2d 921 (Miss.1994)].**

Regarding the equitable distribution of marital property, this Court in *Ferguson* outlined the following factors for consideration:

- 1. Substantial contribution to the accumulation of property (a) direct or indirect economic contribution (b) contribution to stability and harmony of the marital relationship measured by quality, quantity of time spent on family duties and duration of marriage. (c) contribution to the education, training bearing on the earning capacity of spouse accumulating assets.**
- 2. Degree to which each spouse has expended, withdrawn, or otherwise disposed of marital assets and any prior distribution of assets.**
- 3. Market value and emotional value of assets subject to distribution.**
- 4. Value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse.**
- 5. Tax and other economic consequences, and contractual or legal consequences to third parties, or the proposed distribution.**
- 6. Extent to which property division may be utilized to eliminate periodic payments and other potential sources of friction.**
- 7. Needs of the parties.**
- 8. Any other factor which in equity should be considered.**  
[*Ferguson v. Ferguson*, 639 So. 2d 921, 928 (Miss.1994)].

An evaluation of the *Ferguson* factors is completely absent from the Record in the matter *sub judice*. Trey contends that the Chancery Court's division of property is unfair, not equitable, and contrary to the law in *Ferguson*. In the matter *sub judice* there was no findings of facts and conclusions of law with respect to the marital property division. The Chancery Court not only failed to delineate the *Ferguson* factors, but neither *Hemsley* or

the *Ferguson* factors were even mentioned when the Chancellor took to the task of dividing the marital property. Trey contends that due to lack of the application of the *Hemsley* and the *Ferguson* factors, the property division provided by the said Judgment of Divorce is without a legal basis. The Chancery Court's failure to make certain findings on the Record regarding the *Ferguson* factors is manifest error, and therefore the *Judgment of Divorce* should thus be vacated.

### **CONCLUSION**

Trey has submitted four (4) valid issues that demonstrate that the Chancery Court erred in its *Judgment of Divorce* as follows:

- (1) The statutory ground of habitual drunkenness as set forth in Miss Code Ann. §93-5-1(5) was not fully proven.
- (2) Trey's parents were erroneously permitted by the Chancery Court to act as Trey's *de facto* attorneys in the division of marital assets.
- (3) Both the parties to failed to submit a financial disclosure pursuant to U.C.C.R. 8.05, thereby making it impossible for the Chancery Court to separate marital assets from non-marital assets, and making it impossible for the Chancery Court to make an equitable distribution of marital assets.
- (4) The Chancery Court is in manifest error in failing to make a distinction between marital and non-marital property pursuant to *Hemsley*, and failing to evaluate the division of marital assets by the following guidelines set forth by this Court, i.e. the *Ferguson* factors,

and to support its decisions with findings of facts and conclusions of law, pursuant to *Hemsley* and *Ferguson*.

Trey respectfully submits unto the Honorable Court that the foregoing issues adequately demonstrate that the *Judgment of Divorce* is manifest error. Trey therefore prays the Court to vacate the Chancery Court's *Judgment of Divorce*, and the *Qualified Domestic Relations Order to the Simplified Employee Pension of Speights Roofing, LLC FBO Edward W. Speights, III* entered pursuant thereto, and to remand this matter to the Chancery Court to be tried on its merits. Trey further prays that the Honorable Court will tax all costs of this appeal, including reasonable attorney fees, to the Appellee.

**RESPECTFULLY SUBMITTED** this the 11<sup>th</sup> day of August A.D. 2017.

**/s/ Renee McBride Porter**  
Renee McBride Porter  
Mississippi State Bar No. 8388  
Porter Law Firm, P.A.  
915 Main Street  
Post Office Box 982  
Columbia, Mississippi 39429  
Telephone: (601) 731-1886  
Facsimile: (601) 731-1887  
E-mail: rporter@porterlf.com  
                    wepiercejr@porterlf.com  
Counsel for the Appellant

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**EDWARD WILLIAM SPEIGHTS, III**

**APPELLANT**

**VERSUS**

**CASE NO. 2016-CA-01691**

**KIMBERLY DANIELS SPEIGHTS**

**APPELLEE**

**CERTIFICATE OF SERVICE**

This is to certify that I, Renee McBride Porter, counsel of record for the Appellant, have electronically filed the foregoing *Appellant's Excerpts of the Record* using the MEC system which has sent notification of the same to the following:

**Honorable S. Christopher Farris  
6645 Highway 98 West  
Suite 3  
Hattiesburg, Mississippi 39402-7509  
Email: rusnapper@aol.com**

Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

This the 11<sup>th</sup> day of August A.D. 2017.

**/s/ Renee McBride Porter**  
Renee McBride Porter  
Mississippi State Bar No. 8388  
Porter Law Firm, P.A.  
915 Main Street  
Post Office Box 982  
Columbia, Mississippi 39429  
Telephone: (601) 731-1886  
Facsimile: (601) 731-1887  
E-mail: rporter@porterlf.com  
                    wepiercejr@porterlf.com  
Counsel for the Appellant



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**APPELLANT'S CERTIFICATE OF SERVICE FOR APPELLANT'S BRIEF  
(TRIAL COURT JUDGE)**

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This is to certify that I, Renee McBride Porter, counsel of record for the Appellant, Edward William Speights, III, have electronically filed the Appellant's Brief using the ECF system, and have sent notification of such filing via United States First Class Mail postage pre-paid to the Chancery Court Judge as follows:

**Honorable Gerald M. Martin  
Post Office Box 325  
Raleigh, Mississippi 39153**

This the 11<sup>th</sup> day of August A.D. 2017.

**/s/ Renee McBride Porter**  
Renee McBride Porter  
Mississippi State Bar No. 8388  
Porter Law Firm, P.A.  
915 Main Street  
Post Office Box 982  
Columbia, Mississippi 39429  
Telephone: (601) 731-1886  
Facsimile: (601) 731-1887  
E-mail: rporter@porterlf.com  
wepiercejr@porterlf.com  
Counsel for the Appellant